



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0071]

Hours of Service of Drivers: McKee Foods Transportation, LLC, Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from McKee Foods Transportation, LLC (MFT) for an exemption from certain provisions of the Agency's hours-of-service (HOS) regulations. MFT proposes that its team drivers engaged in delivery and backhaul operations be granted an exemption from the HOS rules pertaining to use of a sleeper berth (SB). Current HOS rules require that all SB rest regimens include, in part, the regular use of a SB period for at least 8 hours--combined with a separate period of at least 2 hours, either in the SB, off-duty or some combination of both--to gain the equivalent of at least 10 consecutive hours off duty. MFT proposes that its team drivers be allowed to take the equivalent of 10 consecutive hours off duty by splitting SB time into two periods totaling 10 hours, provided neither of the two periods is less than 3 hours. FMCSA requests public comment on MFT's application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2014-0071 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number.

For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to www.regulations.gov, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT:

Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal**

Register (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

McKee Foods Transportation, LLC (MFT) is a private carrier that sells fresh snack products under the Little Debbie, Sunbelt, and Drake's brands. MFT delivers products in interstate commerce to 48 states and parts of Canada from three manufacturing distribution centers and one stand-alone distribution center. MFT employs approximately 650 drivers, using more than 300 tractor-trailer combinations. MFT uses team drivers on customer delivery trips to maximize efficiency. Their average driver is on duty approximately 35 – 45 hours per week with the majority of the on-duty time split between driving and unloading the trailer. A typical trip averages six stops. A percentage of the trips make backhauls – both private and for-hire. The average round trip is about 1,000 miles. A team usually delivers two trailer loads per week, with time at home between most trips.

MFT states that it operates on a routine weekly cycle. Each workweek contains a regular subset of daily cycles dispatching and returning long-, medium- and short-range trips. MFT advises that it has a constant flow of outbound and inbound trucks that allow it to continuously ship fresh-baked goods and return with backhauls of raw materials and other for-hire loads. The routine cycles allow most of the drivers to have regular schedules. Many of MFT's drivers are off duty at least 48 consecutive hours every week while many others are off duty at least 72 consecutive hours. MFT's tractors are

equipped with double-bunk sleepers in the event both drivers need or want to rest at the same time. Drivers are allowed to make their own decisions about when and where to take short rest breaks based on their personal needs and preferences in conformance with current regulatory requirements. MFT asserts that it takes safety, health and wellness seriously, and hires well-qualified drivers who go through a comprehensive orientation/new hire training program. MFT's trucks are equipped with Electronic On-Board Recorders (EOBRs) which include electronic logs.

MFT requests an exemption from the current regulations for its delivery shipments and backhaul activity operations to eliminate the requirement that SB time include a period of at least 8 but less than 10 consecutive hours in the SB and a separate period of at least 2 but less than 10 consecutive hours either in the SB or off duty, or any combination thereof (49 CFR 395.1(g)(1)(ii)(A)(1)). MFT proposes that these team drivers be allowed to split SB time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. The request would be limited to team drivers.

MFT states that the activities of its team drivers involve both driving and offloading product to its customers. The drivers average approximately 53 hours per week on the road away from home. Approximately 30 percent of this time is spent in the sleeper. MFT contends that the experience of its drivers has demonstrated that sleeping in a moving vehicle is more difficult than in a stopped truck. According to MFT, having the flexibility to switch with a partner allows each driver to take advantage of shorter time periods when they may feel fatigued. Further, this will result in a more flexible work pattern, allowing both drivers to perform warehouse functions together (to reduce driver unloading time, improve maneuvering in the warehouse), and improving personal and vehicular safety.

MFT states that it is committed to maintaining its outstanding safety record by focusing on continuous improvement, promoting technologies to enhance safety, conducting thorough inspections and having well-communicated policies in place to address both safety and compliance-related topics. MFT identified some countermeasures it would take to maintain safe operations if the exemption is granted.

The safeguards include, but are not limited to:

- Every week, all transportation operations shut down one hour prior to sundown on Friday until one hour after sundown on Saturday, resulting in an automatic minimum 26 hour off-duty home time for all drivers in addition to two or three days home time during the week;
- All tractors are equipped with speed limiters;
- Drivers use EOBRs to track their duty time and HOS compliance;
- Drive time is reduced from 11 hours to 10 hours. Team drivers are limited to 10 hours of driving prior to completing their required 10 hours total SB.
- Behavior-based event data is monitored from the EOBR to enhance safety measures already in place to help reduce the probability of accidents on the road.

MFT believes that by allowing its team drivers to exercise flexibility in their SB requirements, the drivers would experience more quality rest. To support its request for the exemption, MFT cited the results of an FMCSA-sponsored study entitled “Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health” by Belenky (2012). The report noted “...that when consolidated nighttime sleep is not possible, split sleep is preferable to consolidated daytime sleep.” (http://ntl.bts.gov/lib/51000/51200/51254/12-003-Split-Sleep_Investigation-of-the-Effects-of-Split-Sleep-Schedules-on-Commercial-Vehicle-Driver-Safety-and-Health-508.pdf)

A copy of MFT's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on MFT's application for an exemption from certain provisions of the driver's HOS rules in 49 CFR part 395. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: April 28, 2014.

Larry W. Minor,
Associate Administrator for Policy.

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